

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

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U.S. DISTRICT COURT
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TX EASTERN-BEAUMONT

IN RE NORPLANT CONTRACEPTIVE §
PRODUCTS LIABILITY LITIGATION §
§

MDL No. 1038
ALL CASES BY

Beverly Aulbaugh

ORDER GRANTING IN PART AND DENYING IN
PART WYETH'S THIRD MOTION TO DISMISS

This matter is before the court on Defendant Wyeth's Third Motion to Dismiss, filed on March 24, 1998. In its motion, Wyeth alleges that over 2,500 plaintiffs formerly represented by the law firm of Holstein, Mack & Klein were delinquent in their responses to Wyeth's first set of interrogatories. Although numerous plaintiffs filed responses to Wyeth's allegations, the overwhelming majority of plaintiffs subject to Defendants' motion failed to make any objection.¹ On April 9, 1998, Wyeth filed a reply memorandum in support of its motion. On May 12, 1998, Wyeth filed an additional supplement to its motion, listing the plaintiffs who were still delinquent in their interrogatory responses. Based upon the written submissions of the parties and the applicable law, the court is of the opinion that Wyeth's motion should be GRANTED IN PART and DENIED IN PART.

¹ The following plaintiffs filed responses with the court: (1) Provost & Umphrey Plaintiffs, response filed March 25, 1998; (2) Plaintiff Nilsa Cruz, response filed March 30, 1998; (3) Plaintiffs represented by the Law Firm of Davis & Feder, responses filed March 30, 1998; (4) Lona Sue Bennett, response received April 3, 1998; (5) Plaintiff Heather Weir, response letter received April 3, 1998; (6) Plaintiff Robbie Ropella, response letter received April 6, 1998; (7) the Law Offices of Robert A. Holstein, P.C., the Law Offices of Jeffrey M. Goldberg & Associates, Ltd., Robert A. Holstein, Aron D. Robinson, Jewel Klein, Bruce Goodhart, Jeffrey Goldberg, and Susan Bonds, response received April 6, 1998; (8) Plaintiff Shannon Voges-Haupt, response filed April 7, 1998; (9) Plaintiff Julie Dominguez, response letter received April 7, 1998; (10) Plaintiff Kristin Brown, response filed April 10, 1998; (11) Plaintiff Yvette Haber, response filed April 17, 1998; (12) Plaintiffs Lillian Ayo and Mary King, response filed April 29, 1998.

DISCUSSION

On September 18, 1997, the law firm of Holstein, Mack & Klein, the Law Offices of Robert A. Holstein, P.C., the Law Offices of Jeffrey M. Goldberg & Associates, Ltd., Robert A. Holstein, Aron D. Robinson, Jewel Klein, Bruce Goodhart, Jeffrey Goldberg, and Susan Bonds (“Plaintiffs’ counsel”) moved this court to allow them to withdraw from their representation of 2,500 Norplant plaintiffs. In their motion, Plaintiffs’ counsel also requested that the court stay all discovery proceedings with respect to their clients so that each would have an opportunity to obtain new counsel. On January 9, 1997, the court granted Plaintiffs’ counsels’ request to withdraw their representation, but denied their request to stay all discovery proceedings (the “January Order”).² *See* Order of January 9, 1998.

Pursuant to the January Order, the court directed plaintiffs who had already procured new counsel to submit responses to Defendants’ first set of interrogatories on or before March 1, 1998. *Id.* at 3. The court then ordered Plaintiffs’ counsel to mail copies of Defendants’ discovery requests to those plaintiffs who had not retained substitute counsel no later than February 13, 1998. *Id.* The court ordered these plaintiffs to provide responses to Defendants’ requests within 30 days of the receipt of such requests, if they had not previously done so. *Id.*


Through its motion, Wyeth indicates that the majority of plaintiffs originally represented by Plaintiffs’ counsel have failed to provide discovery responses within the deadlines established by

²The court originally filed its Order granting Plaintiffs’ counsels’ request to withdraw and denying their request for stay on December 19, 1997, (the “December Order”). *See* Order of December 19, 1998. However, the court amended the December Order on January 9, 1998, in order to reschedule the deadlines established in the December Order, thereby offering Plaintiffs’ Counsel and the plaintiffs additional time to comply with its rulings. *See* Order of January 9, 1998.

the court. *See* Defs.' Third Mot. to Dismiss at Attach. 2, 3. Since the filing of its original motion, Wyeth has twice supplemented their request to dismiss. On April 9, 1998, Wyeth filed a reply memorandum eliminating from its request for dismissal those plaintiffs who had provided responses to Defendants' first set of interrogatories since the filing of Wyeth's initial motion. *See* Reply Mem. in Supp. of Wyeth's Third Mot. to Dismiss and Update Regarding Status of Disc. Responses. The memorandum indicated, however, that as of that date more than ninety percent of the plaintiffs named in Wyeth's motion were still delinquent in tendering their responses. *Id.* at 2. On May 12, 1998, Wyeth again supplemented its motion by removing those plaintiffs who had complied with Defendants' discovery requests as of May 10, 1998. *See* Supp. Mem. in Supp. of Wyeth's Third Mot. to Dismiss.

The court notes that the majority of plaintiffs who filed responses to Wyeth's motion have been removed from its request for dismissal through Wyeth's continued supplementation. Further, the court notes that those plaintiffs who remain a part of Wyeth's motion to dismiss, whether represented by substitute counsel or not, are in violation of the court's discovery deadlines and have had ample opportunity to provide responses to Defendants' requests. Therefore, the court finds that Wyeth's motion should be GRANTED, and the cases of those plaintiffs subject to the motion should be DISMISSED WITHOUT PREJUDICE to refiling.³ It is so ORDERED.⁴

Signed this the 10th day of July, 1998.


RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

³ To the extent that Wyeth's motion requests that the court dismiss Plaintiffs' cases with prejudice, the motion is DENIED.

⁴ For a list of plaintiffs affected by this Order, see Tab 1 to Supplemental Memorandum in Support of Wyeth's Third Motion to Dismiss, filed on May 12, 1998.